IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PHYLLIS WILSON	:	CIVIL ACTION
	:	
v.	:	
	:	
WILLIAM A. HALTER, et al.	:	No. 00-468

MEMORANDUM AND ORDER

J. M. KELLY, J. **APRIL , 2001**

Presently before the Court is a Motion to Alter or Amend Judgment, filed by the Defendant, William A. Halter, Acting Commissioner of Social Security ("the Commissioner"). The Plaintiff, Phyllis Wilson ("Wilson"), sought Supplemental Security Income ("SSI") under Title XVI of the Social Security Act, 42 U.S.C. §§ 1381-1385 (1976 Supp. V 1981). The Commissioner denied her request. Pursuant to 42 U.S.C. § 405(g) (2000), Wilson sought judicial review of that denial. Both parties filed cross-Motions for Summary Judgment. United States Magistrate Judge M. Faith Angell, to whom this case was referred, recommended entering summary judgment in favor of Wilson. Although the Commissioner filed timely Objections to that Report and Recommendation, the Court never received them. On February 28, 2001, the Court consequently approved and adopted the Magistrate Judge's Report and Recommendation. The Commissioner then filed the instant Motion to Alter or Amend that judgment. For the following reasons, the Commissioner's Motion is granted and summary judgment is entered in favor of the Commissioner.

I. BACKGROUND

On January 22, 1996, Wilson filed for SSI benefits. She alleged she had been disabled since March 2, 1994, because of: (1) a prolapsed and deformed second metatarsal of her right foot; (2) reflex sympathetic dystrophy of the right foot and complex regional pain syndrome; (3) lumbar radiculopathy and bilateral lumbar myofascial pain syndrome; and (4) chronic depression. The Commissioner denied Wilson's initial claim for SSI benefits and also denied her request for reconsideration. Following those denials, Wilson requested a hearing before an Administrative Law Judge ("ALJ").

The ALJ conducted the hearing on February 3, 1998. Both parties presented evidence at this hearing. For example, Wilson presented the medical opinion of Dr. William Mangino ("Mangino"), a pain management physician who saw Wilson on one occasion. Mangino's report concluded that "this patient . . . will be able to work at few activities on a regular basis for the remainder of her natural life." The Commissioner presented a vocational expert who testified that, based on Wilson's age, educational background, work experience and residual functional capacity, Wilson was qualified for approximately 14,000 and 877,000 jobs regionally and nationally, respectively. Acknowledging Wilson's specific limitations, the vocational expert identified specific occupations that involved sedentary, unskilled work that Wilson

could adequately perform.

In a decision dated May 13, 1998, the ALJ found that Wilson was not totally disabled and was therefore not entitled to SSI benefits. Wilson asked the Appeals Council to review the hearing decision. The Appeals Council upheld the ALJ's decision and denied Wilson's appeal. On April 16, 1999, nearly a full year after the ALJ filed her decision, Wilson provided the Commissioner with the records of Michael Bien-Aime, M.D. ("Bien-Aime"). Wilson believes these records support her contention that she is totally disabled.

On January 25, 2000, Wilson filed an appeal in United States District Court for the Eastern District of Pennsylvania pursuant to 42 U.S.C. § 405(g) (2000) ("Any individual, after any final decision of the Commissioner of Social Security . . . may obtain a review of such decision by a civil action. . . . Such action shall be brought in the district court of the United States for the judicial district in which the plaintiff resides. . . ."). The Commissioner answered and both parties eventually filed cross-Motions for Summary Judgment. The matter was referred to United States Magistrate Judge Angell. In her Report and Recommendation, dated February 14, 2001, Magistrate Judge Angell recommended that Wilson's Motion be granted and the case be remanded to the Commissioner for the calculation and award of benefits.

Although the Commissioner filed Objections to the Report and Recommendation on February 26, 2001, the Court did not receive them. Therefore, the Court did not consider those Objections before approving and adopting the Report and Recommendation on February 28, 2001. The Commissioner filed the instant Motion to Alter or Amend Judgment Pursuant to Federal Rule of Civil Procedure 59(e), which the Court will now consider.

II. STANDARD OF REVIEW

Federal Rule of Civil Procedure 59(e) and Local Civil Rule 7.1(g) of the United States District Court for the Eastern District of Pennsylvania allow parties to file motions for reconsideration or amendment of a judgment. Fed. R. Civ. P. 59(e); E.D. Pa. R. Civ. P. 7.1(g). Courts should grant these motions sparingly, reserving them for instances when: (1) there has been an intervening change in controlling law; (2) new evidence has become available; or (3) there is a need to prevent manifest injustice or correct a clear error of law or fact. See, e.g., General Instrument Corp. v. Nu-Tek Electronics, 3 F. Supp. 2d 602, 606 (E.D. Pa. 1998), aff'd, 197 F.3d 83 (3d Cir. 1999); Environ Prods., Inc. v. Total Containment, Inc., 951 F. Supp. 57, 62 n.1 (E.D. Pa. 1996). Mere dissatisfaction with the Court's ruling is not a proper basis for reconsideration. Burger King Corp. v. New England Hood and Duct Cleaning Co., No. 98-3610,

2000 WL 133756 at *2 (E.D. Pa. Feb. 4, 2000). If reviewing its original decision is appropriate, the court should employ the same legal standard that was applicable in the proceedings from which the challenged judgment resulted. See, e.g., Adams v. Gould Inc., 739 F.2d 858, 864 (3d Cir. 1984).

Federal Rule of Civil Procedure 72 governs objections to magistrate judges' orders, both dispositive and non-dispositive. Fed. R. Civ. P. 72. With regard to dispositive motions, district courts must conduct a de novo review of any portion of a magistrate judge's recommended disposition to which specific and timely written objection has been made. See Fed. R. Civ. P. 72(b); see also 28 U.S.C. § 636(b)(1)(C). A challenge of a denial of SSI benefits is considered a motion for summary judgment and, therefore, is a dispositive motion. 28 U.S.C. § 636(b)(1)(A)-(B).

III. DISCUSSION

Rule 72(b) affords parties ten days in which to formally object to a Magistrate Judge's recommended disposition of a matter. Fed. R. Civ. P. 72(b). When a Federal Rule of Civil Procedure allows fewer than eleven days in which to file a pleading, intermediate weekends and legal holidays are excluded from the computation of time allowed. Fed. R. Civ. P. 6(a). In the present matter, Magistrate Judge Angell filed her Report and

Recommendation on February 14, 2001. The Commissioner filed his Objections to the Report and Recommendation on February 26, 2001. Because the intermediate weekend is excluded from the computation of the ten days allowed, the Commissioner filed his Objections within the prescribed ten day period. For clerical reasons, however, the Court did not receive the Commissioner's Objections and, consequently, approved and adopted the Report and Recommendation without considering them. Because the Commissioner filed his Objections in a timely manner, the Court will consider them now; to do otherwise would result in manifest injustice. Environ Prods., , 951 F. Supp. at 62 n.1. Whether the Court alters or amends its judgment, however, depends on the merits of those Objections.

In this case, the ALJ determined that Wilson was not disabled. A person is eligible for SSI benefits if a disability if she has a medically determinable physical or mental impairment, which will last for more than one year, that is so severe that it prevents her from engaging in any substantial gainful activity that exists in the national economy. See 42 U.S.C. § 1382c(a)(3)(A); see also Petition of Sullivan, 904 F.2d 826, 845 (3d Cir. 1990). When reviewing the decision of the Commissioner of Social Security, district courts "have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the

Commissioner of Social Security, with or without remanding the cause for a rehearing." 42 U.S.C. § 405(g) (2000). Despite this broad power, the review of an ALJ's determinations is limited; district courts cannot conduct a de novo review of an ALJ's decision or re-weigh the evidence of record. Monsour Med. Ctr. v. Heckler, 806 F.2d 1185, 1190 (3d Cir. 1986); Palmer v. Apfel, 995 F. Supp. 549, 552 (E.D. Pa. 1998). Indeed, district courts are bound by an ALJ's factual findings if they are supported by "substantial evidence." 42 U.S.C. § 405(g); Plummer v. Apfel, 186 F.3d 422, 427 (3d Cir. 1999). Substantial evidence is "not . . . a large or considerable amount of evidence, but rather 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" Pierce v. Underwood, 487 U.S. 552, 564-65 (1988) (quoting Consolidated Edison Co. v. NLRB, 305 U.S. 197, 229 (1938)). To enable courts to properly evaluate the sufficiency of the evidence, an ALJ's decision "should be accompanied by a clear and satisfactory [explication] of the basis on which it rests." Cotter v. Harris, 642 F.2d 700, 704 (3d Cir. 1981). If supported by substantial evidence, an ALJ's findings are entitled to deference and should be affirmed, even if a court would have decided the case differently. Monsour, 806 F.2d at 1190-91.

In the instant case, there is enough evidence to reasonably and adequately support the ALJ's conclusion that Wilson was not

disabled. For example, the Commissioner's vocational expert, to whom Wilson did not object during the hearing, testified that Wilson was able to perform numerous jobs. The ALJ's Hearing Decision explicitly sifted through and examined the evidence that had been presented. The ALJ stated compelling reasons for giving more weight to some evidence and less weight to other evidence. Moreover, the ALJ's thorough consideration of the record is reflected in her ultimate conclusion. Recognizing Wilson's exertional and non-exertional limitations, the ALJ concluded that Wilson was nonetheless still able to perform sedentary work that: (1) does not require pushing or pulling with the lower extremities; (2) allows her to change position at will; and (3) is limited to simple one or two step tasks. Therefore, the ALJ's findings indicate that she did not, as Wilson contends, totally discount Wilson's claims of pain and depression. Rather, the ALJ found that those limitations did not render Wilson totally disabled per se. That conclusion was supported by substantial evidence.[1]

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[1] Magistrate Judge Angell stated in her Report and Recommendation that the ALJ "essentially discount[ed]" Mangino's medical opinion. That Report and Recommendation, however, relies exclusively on that opinion, ignoring the evidence presented by the Commissioner. Accordingly, it inappropriately re-weighed the evidence before the ALJ. See Heckler, 806 F.2d at 1190; Palmer, 995 F. Supp. at 552. Moreover, rather than concluding that Wilson was completely barred from working, Mangino explicitly conceded that Wilson could perform some work activities. Based on the evidence, the Court cannot say that the ALJ's decision was not supported by substantial evidence.

Wilson first suggests that the Court should reverse the ALJ's decision. Wilson argues that the ALJ's conclusion that she is able to make a successful vocational adjustment to work which exists in significant numbers in the national economy, a necessary predicate to finding someone not disabled, is not supported by substantial evidence. The Court disagrees. The ALJ's conclusion was based in part upon the testimony of a vocational expert, to whom Wilson's counsel had no objection. That vocational expert concluded that Wilson, even with her limitations, was qualified for approximately 14,000 and 877,000 regional and national jobs, respectively. The vocational expert also identified specific occupations that involved sedentary, unskilled work she would be able to perform. In her Motion for Summary Judgment, Wilson cited job descriptions from the Dictionary of Occupational Titles,[2] which she believes counters the vocational expert's testimony that she would be able to perform certain jobs. These descriptions, however, relate only to specific sub-categories of jobs and, like the Dictionary of Occupational Titles itself, are by no means exclusive or controlling. Elcock v. Kmart Corp., 233 F.3d 734, 744 n.4 (3d Cir. 2000). Thus, even if the Court would have reached a conclusion contrary to the ALJ's, it cannot be said that the

[2] See generally U.S. Dep't of Labor, Dictionary of Occupational Titles (4th ed. 1991).

ALJ's decision was not supported by substantial evidence.

Wilson also suggests that, in the alternative, the Court should remand this matter to the ALJ for consideration of additional evidence. Specifically, Wilson points to the medical records of Bien-Aime. The ALJ did not consider these records because Wilson did not submit them until April 16, 1999, almost a full year after the ALJ filed her decision. Evidence that was not before the ALJ cannot be used to argue that her decision was not supported by substantial evidence. Matthews v. Apfel, 239 F.3d 589, 594 (3d Cir. 2001). Nevertheless, a claimant's reliance on new evidence may occasionally justify a court's remanding a matter back to the Commissioner for consideration of that new evidence. Remand in such situations is limited, however, to situations where the evidence is new and material, and there was good cause why it was not previously presented to the ALJ. Id. at 593. Dr. Bien-Aime's records cover the period from June 16, 1998 to March 30, 1999; the ALJ's Hearing Decision was issued on May 13, 1998. Because the documents relate to a period of time after that addressed in the hearing, the documents are immaterial to the ALJ's decision and therefore do not warrant remand.

Substantial evidence supports the ALJ's findings that Wilson is not disabled and that work for which Wilson is qualified exists in significant numbers in the national economy.

Accordingly, the Report and Recommendation is not approved and adopted, the Commissioner's Motion to Alter or Amend Judgment is granted and Summary Judgment is entered in favor of the Commissioner.

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ORDER

AND NOW, this day of April, 2001, in consideration of the Motion to Alter or Amend Judgment filed by the Defendant, William A. Halter, Acting Commissioner of Social Security (Doc. No. 17), and the Response filed by the Plaintiff, Phyllis Wilson, it is **ORDERED** that:

1. The Defendant's Motion to Alter or Amend Judgment is **GRANTED**.
2. The Court's Orders of February 28, 2001 (Doc. Nos. 15, 16), which approved and adopted the Report and Recommendation of Magistrate Judge M. Faith Angell, and granted the Plaintiff's Motion for Summary Judgment, are **VACATED**.
3. The Plaintiff's Motion for Summary Judgment (Doc. No. 7) is **DENIED**.
4. The Defendant's Motion for Summary Judgment (Doc. No. 10) is **GRANTED**.
5. Judgment is **ENTERED** in favor of the Defendant, William A.

Halter, and against the Plaintiff, Phyllis Wilson.

BY THE COURT:

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JAMES McGIRR KELLY, J.